

CHARITABLE GAMING STATUTES

KRS CHAPTER 238

238.500 Purpose – Intent – Construction

The General Assembly of the Commonwealth of Kentucky hereby declares that charitable gaming conducted by charitable organizations is an important method of raising funds for legitimate charitable purposes and is in the public interest. The purpose of this chapter is to comply with constitutional requirements by establishing an effective and efficient mechanism for regulating charitable gaming which includes defining the scope of charitable gaming activities, setting standards for the conduct of charitable gaming which insure honesty and integrity, providing for means of accounting for all moneys generated through the conduct of charitable gaming, and providing for suitable penalties for violations of laws and administrative regulations. The intent of this chapter is to prevent the commercialization of charitable gaming, to prevent participation in charitable gaming by criminal and other undesirable elements, and to prevent the diversion of funds from legitimate charitable purposes. In order to carry out the purpose and intent, the provisions of this chapter, and any administrative regulations promulgated in accordance with this chapter, shall be construed in the public interest and strictly enforced.

Effective: March 16, 1994

History: Created 1994 Ky. Acts ch. 66, sec. 1, effective March 16, 1994.

238.505 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Department" means the Department of Charitable Gaming within the Public Protection and Regulation Cabinet;

(2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;

(3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;

(4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, or card-minding device representations thereof, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. Charity game ticket shall include pulltabs;

(6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

(7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;

(8) "Charity fundraising event" means a fundraising activity of limited duration at which games of chance approved by the department are conducted, including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as fairs, festivals, carnivals, and bazaars;

(9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:

- (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and

- (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;

(10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:

- (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; and

- (b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the department.

(11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;

(12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

(13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;

(14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;

(15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;

(16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;

(17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the department;

(18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;

(19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, excluding bingo played at a charity fundraising event;

(20) "Immediate family" means:

- (a) Spouse and parents-in-law;
- (b) Parents and grandparents;
- (c) Children and their spouses; and
- (d) Siblings and their spouses;

(21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;

(22) "Secretary" means the secretary of the Public Protection and Regulation Cabinet;

(23) "Commissioner" means the commissioner of the Department of Charitable Gaming within the Public Protection and Regulation Cabinet;

(24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under KRS 238.535(9)(g);

(25) "Year" means calendar year except as used in KRS 238.545(4), 238.547(1), and 238.555(7), when "year" means the licensee's license year; and

(26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 1, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 2, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 2, effective March 16, 1994.

238.510 Department of Charitable Gaming -- Commissioner -- Conflicts of interest of staff -- Charitable gaming investigators.

(1) The Department of Charitable Gaming is created as a department within the Public Protection and Regulation Cabinet. The department shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.

(2) The department shall be headed by a commissioner who shall be appointed by the Governor upon recommendation of the secretary. The commissioner shall employ staff as may be necessary to administer and enforce the provisions of this chapter.

(3) All department staff shall be classified and employed in accordance with applicable personnel requirements of the Personnel Cabinet in accordance with KRS Chapter 18A.

(4) No employee of the department during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the department during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.

(5) The commissioner shall appoint charitable gaming investigators who shall have the powers of peace officers throughout the Commonwealth; however, those powers shall be limited to:

(a) Enforcement of the provisions of KRS Chapter 238, relating to charitable gaming;

(b) Violations of KRS Chapter 528, relating to:

1. Unlicensed and illegal charitable gaming;

2. Gambling offenses committed on licensed charitable gaming premises; and

3. Gambling offenses committed in conjunction with charitable gaming;

(c) Violations of KRS Chapter 514, relating to theft, embezzlement, or other illegal diversions of charitable gaming proceeds;

(d) Violations of KRS Chapters 516 and 517, relating to forgery and fraud in the conduct of charitable gaming;

(e) Violations relating to the damage or destruction of real or personal property owned or leased by a charitable gaming licensee; and

(f) Violation of any criminal felony offense committed:

1. On licensed charitable gaming premises; and

2. In the presence of a charitable gaming investigator.

(6) Charitable gaming investigators shall satisfy the certification standards established by the Department of Criminal Justice Training pursuant to KRS Chapter 15. The commissioner may possess peace officer powers granted under subsection (5) of this section, if he or she is duly qualified. Charitable gaming investigators shall not qualify for hazardous duty coverage under the Kentucky Employees Retirement System.

(7) Charitable gaming investigators so appointed shall not possess peace officer powers other than those provided in subsection (5) of this section.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 3, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 154, sec. 87, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 3, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 3, effective March 16, 1994.

238.515 Powers and duties of department.

The department shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the department shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the department shall have the

authority to issue administrative subpoenas and summonses. The department shall also establish toll-free telephone service for receiving complaints and inquiries;

(6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;

(7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;

(8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the department; and

(9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 4, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 2, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 4, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 4, effective March 16, 1994.

238.520 Charitable Gaming Advisory Commission.

(1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:

(a) The secretary of the Public Protection and Regulation Cabinet or his designee;

(b) The Attorney General or his designee;

(c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;

(d) One (1) representative from the Kentucky Charitable Gaming Association;

(e) One (1) certified public accountant; and

(f) Four (4) members selected from the public at large.

The certified public accountant, the four (4) at-large members, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

(2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.

(3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the department and to the General Assembly but shall not establish policy or become directly involved in the licensing and regulation of charitable gaming by the department.

(4) The commission shall meet quarterly or as otherwise directed by the department. Five (5) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership, and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 5, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 3, effective April 1, 1998. -- Amended 1996 Ky. Acts

238.525 Licensing requirements -- Criminal history background check -- Disqualification.

(1) Licenses shall be issued by the department on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the department in any manner it deems appropriate to facilitate efficient licensing. The department shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.

(2) The department may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.

(3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the department, with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the department with the assistance of the Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The department shall require the fingerprinting of all applicants for

licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The department may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.

(4) No applicant shall be licensed and no license holder shall be able to maintain a license if an individual associated with the applicant or license holder in a capacity listed in subsection (3) of this section or the applicant or license holder itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.

(5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The department may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.

(6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the department in writing within thirty (30) days of the date the change occurred.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 6, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 4, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 5, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 6, effective March 16, 1994.

238.530 Licensing of distributors and manufacturers of supplies and equipment - Eligibility -- Restrictions.

(1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the department as a distributor. The department shall charge a license fee not to exceed one thousand dollars (\$1,000).

(2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the department as a manufacturer. The department shall charge a license fee not to exceed one thousand dollars (\$1,000).

(3) No person who is licensed as a charitable organization, and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.

(4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the department and shall submit as part of the application process the following:

(a) The full name, address, date of birth, and Social Security number of the applicant;

(b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;

(c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;

(d) Federal employer tax number;

(e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;

(f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and

(g) Any other information the department deems appropriate.

(5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the department to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the department at reasonable times, and all records shall be maintained for a minimum of three (3) years. The department may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the department.

(6) A distributor who does not receive payment in accordance with the terms of its sales or lease agreement from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the department of the delinquency in writing in a form and manner prescribed by the department. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the department of the delinquency in writing in a form and manner prescribed by the department.

(7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.

(8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor or a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.

(9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.

(10) No officer, owner, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates, shall, with respect to a licensed charitable organization:

- (a) Manage or otherwise be involved in the conduct of charitable gaming;
- (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
- (c) Handle any moneys generated in the conduct of charitable gaming;
- (d) Advise a licensed charitable organization on the expenditure of net receipts;
- (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
- (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
- (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
- (h) Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;

(i) Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or

(j) Donate or give any prize to be awarded in the conduct of charitable gaming.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 7, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 5, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 6, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 7, effective March 16, 1994.

238.535 Licensing of charitable organizations conducting charitable gaming -- Exemptions -- Qualifications.

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the department. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:

(a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars (\$25,000) per year;

(b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars (\$25,000) per year; and

(c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars (\$25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars (\$25,000).

(2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the department in writing, on a simple form issued by

the department, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:

- (a) Payment of the fee imposed under the provisions of KRS 238.570; and
- (b) The quarterly reporting requirements imposed under the provisions of KRS 238.550(5), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the department a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the department. Upon receipt of the yearly financial report, the department shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the department determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the department shall revoke the exemption. The organization may request an appeal of this revocation pursuant to KRS 238.565. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

- (a) Report the amount to the department; and

- (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the department shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the department determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the department determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
- (a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
 - 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the department, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the department a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph; and

(d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the department; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be

conducted shall be the county in which the raffle drawing is to be conducted. However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing in a Kentucky county other than that in which the organization's office or place of business is located if the organization notifies the department in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the department, including facsimile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the department shall be received prior to the conduct of the raffle drawing at the new location. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

- (a) The name and address of the charitable organization;
- (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

- (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
- (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;
- (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
- (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
- (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
- (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
- (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
- (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct

and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;

(k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the department; and (l) Any other information the department deems appropriate.

(10) An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.

(11) The department may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(12) The department shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

(13) (a) A licensed charitable organization may place its charitable gaming license in escrow if:

1. The licensee notifies the department in writing that it desires to place its license in escrow; and
2. The license is in good standing and the department has not initiated disciplinary action against the licensee.

(b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.

(c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:

1. The charitable organization continues to qualify for licensure;
2. The charitable organization has not engaged in charitable gaming during the escrow period; and
3. The charitable organization pays a reinstatement fee established by the department.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 165, sec. 1, effective July 14, 2000; ch. 374, sec. 8, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 6, effective April 1, 1998; and ch. 434, sec. 4, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 7, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 8, effective March 16, 1994.

Legislative Research Commission Note (7/14/2000). References to the "division" contained in the new language added to subsection (8)(d) of this statute by 2000 Ky. Acts ch. 165, sec. 1, were changed in codification to "department" under KRS 7.136(2), because of the General Assembly's action in 2000 Ky. Acts ch. 374, confirming the creation of the Department of Charitable Gaming and the abolition of the former Division of Charitable Gaming within the Justice Cabinet.

Legislative Research Commission Note (7/14/2000). This section was amended by 2000 Ky. Acts chs. 165 and 374, which do not appear to be in conflict and have been codified together.

238.536 Amount and use of net receipts retained by charitable organization -- Penalties imposed upon charitable organization failing to retain certain percentage of adjusted gross receipts -- Submission of financial plan -- Petition for reconsideration.

(1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary,

civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:

- (a) All fees paid to the department during the calendar year;
- (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and
- (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.

(2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:

- (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of six (6) months and shall be required to submit to the department an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the calendar year in which the probation is imposed;

- (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the department a financial plan as described in paragraph (a) of this subsection. The department shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan;
- (c) If the percentage retained falls between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the department an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the department. The department shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;
- (d) If the percentage falls below twenty-five percent (25%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive calendar year, the licensee shall have its license suspended for a period of one (1) year; and
- (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the department notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.

(3) Any licensee that has had its license suspended under the provisions of subsection (2)(d) of this section shall be required to submit to the department an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the department in accordance with subsection (2)(c) of this section.

(4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, suspend, or deny its license for failure to meet the forty percent (40%) retention threshold prior to July 14, 2000, may petition the department for reconsideration of its action or proposed action. Upon petition for reconsideration, the department shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The department shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 9, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 232, sec. 7, effective April 1, 1998.

238.540 Restrictions on location for charitable gaming -- Display of license -- Conduct and management -- Prohibited donated prizes -- Advertising.

(1) Except as provided in KRS 238.535(8)(d), charitable gaming shall be conducted by a licensed charitable organization at the location, date, and time which shall be stated on the license. A license holder shall notify the department at least thirty (30) days in advance of its intent to change its location, date, or time and approval by the department shall be received by the licensee prior to the conduct of charitable gaming at a new location.

(2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.

(3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the department, law enforcement officials, and other interested officials.

(4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the administration and conduct of the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual. Any effort or attempt to disguise any other type of compensation or private inurement shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.

(5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.

(6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.

(7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.

(8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars (\$5,000) per twenty-four (24) hour period set forth in KRS 238.545(1).

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 165, sec. 2, effective July 14, 2000; and ch. 374, sec. 10, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 8, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 8, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 9, effective March 16, 1994.

Legislative Research Commission Note (7/14/2000). This section was amended by 2000 Ky. Acts chs. 165 and 374, which do not appear to be in conflict and have been codified together.

238.545 Restrictions on frequency, prizes, and participants for various types of charitable gaming -- Limitations on charitable organizations that conduct charity fundraising events.

(1) A licensed charitable organization shall be limited by the following:

(a) In the conduct of bingo, to one (1) session per day, two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars (\$5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase

bingo supplies or play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);

(b) A licensed charitable organization may provide card-minding devices for use by players of bingo games. If a licensed charitable organization offers card-minding devices for use by players, the devices shall be capable of being used in conjunction with bingo cards or paper sheets at all times. The department shall have broad authority to define and regulate the use of card-minding devices and shall promulgate an administrative regulation concerning use and control of them;

(c) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;

(d) Charity game tickets may be sold, with prior approval of the department:

1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or
2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and

(e) An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the department, only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The department shall promulgate administrative regulations regulating the use and control of approved automated charity game ticket dispensers.

(2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in seal card games. Cumulative or carryover prizes in seal card games shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the department. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.

(3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.

(4) With respect to charity fundraising events, a licensed charitable organization shall be limited as follows:

- (a) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the department;
- (b) No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100);
- (c) The department may grant approval for a licensed charitable organization to play bingo games at a charity fundraising event. Cash prizes for bingo games played during a charity fundraising event may not exceed five thousand dollars (\$5,000) for the entire event. No person under the age of eighteen (18) shall be permitted to play bingo at a charity fundraising event unless accompanied by a parent or legal guardian;
- (d) The department may grant approval for a licensed charitable organization to play special limited charitable games at a charity fundraising event authorized under this section. The department shall not grant approval for the playing of special limited charitable games under the provisions of a charity fundraising event license unless the proposed event meets the definition of a charity fundraising event held for community, social, or entertainment purposes apart from charitable gaming in accordance with KRS 238.505(8); and
- (e) Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age

shall be allowed to play or conduct any special limited charitable game. The department shall have broad authority to regulate the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.

(5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 11, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 9, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 9, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 10, effective March 16, 1994.

238.547 Special limited charitable fundraising event licenses -- Limitation – Times -- Locations-- Restrictions on wagering, stakes, and prizess.

(1) A licensed charitable organization shall be limited to two (2) special limited charity fundraising event licenses per year, and a special limited charity fundraising event shall be limited to one (1) session not to exceed six (6) hours. A special limited charity fundraising event shall be conducted only between the hours of 12 noon and 1 a.m.

(2) A special limited charity fundraising event may be held:

- (a) On or in the premises of a licensed charitable organization;
- (b) In a licensed charitable gaming facility, subject to restrictions contained in KRS 238.555(7); or
- (c) At an unlicensed facility under the following conditions:
 - 1. An unlicensed facility shall host no more than one (1) special limited charity fundraising event per year;

2. The facility shall be closed to the general public during the conduct of a special limited charity fundraising event or the event shall be held in a separate room or area not accessible to the general public;
3. Equipment used in the conduct of a special limited charity fundraising event shall be removed from the premises within two (2) working days after the event; and
4. The unlicensed facility shall be subject to requirements stipulated in KRS 238.555(3).

(3) No cash shall be used in playing special limited charity games at a special limited charity fundraising event. Games shall be played with chips, scrip, or imitation money which shall be purchased only through a central bank or cashier under the authority of the chairperson designated by the licensed charitable organization conducting the special limited charity fundraising event. No chips, scrip, or imitation money shall be sold at a gaming table or by a dealer.

(4) Chips, scrip, or imitation money may be redeemed for cash or prizes. Prizes to be offered and their fair market values shall be displayed or listed in a conspicuous location within the gaming area. Prizes shall be redeemed directly or through an auction process within twenty-four (24) hours after the conclusion of the event.

Effective: April 1, 1998

History: Created 1998 Ky. Acts ch. 232, sec. 10, effective April 1, 1998.

238.550 Standards for management and accounting of funds -- Reports -- Charitable gaming expenses.

(1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.

(2) Within two (2) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited into one checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.

(3) All payments for charitable gaming expenses, payments made for prizes purchased, and any charitable donations from charitable gaming receipts shall be made from the charitable gaming account and the payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The department may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.

(4) A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.

(5) Accurate records and books shall be maintained by each organization exempt from licensure under KRS 238.535(1) and each licensed charitable organization for a period of three (3) years. Department staff shall have access to these records at reasonable times. Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status. All licensed charitable organizations shall be required to submit reports to the division at least quarterly. An exempt organization shall submit a yearly financial report in accordance with KRS 238.535(2), and failure to file this report shall constitute grounds for revocation of the organization's exempt status. Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with KRS 238.560(3). Reports filed by a licensed charitable organization shall include, but shall not be limited to, the following information:

- (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;

- (b) The amounts or values of all prizes paid out during the reporting period, including a listing of all prizes donated having a fair market value in excess of fifty dollars (\$50), the names of donors, and the fair market value of the donated prizes;
 - (c) The names and addresses of all persons who are winners of prizes having a fair market value of six hundred dollars (\$600) or more;
 - (d) All expenses paid and the names and addresses of all persons to whom expenses were paid;
 - (e) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and
 - (f) Any other information the department deems appropriate.
- (6) No licensed charitable organization shall incur charitable gaming expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following charitable gaming expenses:
- (a) Charitable gaming supplies and equipment;
 - (b) Rent;
 - (c) Utilities;
 - (d) Insurance;
 - (e) Advertising;
 - (f) Janitorial services;
 - (g) Bookkeeping and accounting services;
 - (h) Security services;
 - (i) Membership dues for its participation in any charitable gaming trade organization;
- and

(j) Any other expenses the department may determine by administrative regulation to be legitimate.

(7) No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 12, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 11, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 10, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 11, effective March 16, 1994.

238.555 Charitable gaming facility license -- Lease agreements for use of facility -- Quarterly reports -- Number of events that may be held -- Display of license and charitable organization's name.

(1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The department shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors. Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.

(2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:

- (a) The address of the facility;
- (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
- (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;

- (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
 - (e) A copy of the lease agreement used by the applicant; and
 - (f) Any other information the department deems appropriate.
- (3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
 - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
 - (h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or
 - (i) Donate or give any prize to be awarded in the conduct of charitable gaming.
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The licensed

charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease. The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The department by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the department. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.

(5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:

- (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county or charter county government, or in a county containing a city of the first class or second class;

- (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.
- (6) A licensed charitable gaming facility shall report at least quarterly to the department and shall provide any information concerning its operation that the department may require.
- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.
- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the department, law enforcement officials, and other interested officials.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 13, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 12, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 11, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 12, effective March 16, 1994.

238.560 Investigation of complaints -- Administrative actions against violators.

- (1) The department may investigate allegations of wrongdoing upon complaint or upon its own volition. The department by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.
- (2) In carrying out its enforcement responsibilities, the department may:

- (a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;
- (b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;
- (c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and
- (d) Conduct in-depth audits and investigations, when warranted.

(3) The department may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder. The department may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand, and levy a fine. An administrative fine shall not exceed one thousand dollars (\$1,000) for each offense. The department may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the department. The department shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the history of previous violations and the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

(4) The department may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.

(5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the department in carrying out its enforcement responsibilities.

(6) The department shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 14, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 331, sec. 12, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 13, effective March 16, 1994.

238.565 Appeals of administrative actions.

(1) A license holder may appeal any administrative action taken under KRS 238.560. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. Service of notification of administrative action, whether by hand delivery or by certified mail, shall be deemed complete if the license holder fails or refuses to accept delivery. For service by hand delivery, notification shall be deemed received upon acceptance of delivery or upon failure or refusal to accept delivery, and the person affecting service on behalf of the department shall record the fact of the failure or refusal. For service by certified mail, the notification of administrative action shall be deemed received when the license holder accepts delivery or fails or refuses to accept delivery at the last known address. The notification shall specify the charges against the license holder, specify the proposed administrative sanction, and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.

(2) Upon receipt of an appeal, the department shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.

(3) Any provisions of KRS Chapter 13B notwithstanding, within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the commissioner a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the commissioner shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.

(4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The department may issue an emergency order pursuant to KRS 13B.125 to summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, safety, or welfare.

(5) A final order of the commissioner may be appealed to Franklin Circuit Court in accordance with KRS Chapter 13B. If the license holder against whom administrative action is proposed does not request an appeal of the action, the department shall enter a final order imposing the proposed administrative action.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 15, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 318, sec. 158, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 14, effective March 16, 1994.

238.567 Powers and duties of peace officers to deal with unlicensed charitable gaming.

All peace officers, on being informed or having reason to believe that charitable gaming not authorized under this chapter is taking place or is about to take place, shall suppress and prevent

it. For this purpose, any peace officer may enter any place where any unlicensed charitable gaming is being conducted or about to be conducted and may arrest without a warrant any person who does not submit satisfactory proof that he or she possesses the necessary license required by this chapter.

Effective: April 1, 1998

History: Created 1998 Ky. Acts ch. 232, sec. 13, effective April 1, 1998.

238.570 Fee on gross receipts -- Charitable gaming regulatory account -- Alternative license fee.

(1) A fee is imposed on charitable gaming in the amount of four-tenths of one percent (0.4%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. Each licensed charitable organization shall remit to the department all moneys due on a quarterly basis. Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with KRS 238.560.

(2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the Public Protection and Regulation Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the department shall be deposited in this account. Moneys in this account shall be expended by the department only in the administration and enforcement of provisions of this chapter. No later than July of each odd-numbered year, the department shall assess the amount of funds raised by all fees levied in this chapter and shall make recommendations to the Legislative Research Commission concerning legislative amendments to adjust fee rates as indicated by the assessment.

(3) If the provision of subsection (1) of this section that imposes a fee of four-tenths of one percent (0.4%) of all gross receipts derived from all charitable gaming conducted by licensed

charitable organizations is declared unconstitutional in a final decision of the highest appellate court of the Commonwealth of Kentucky, for the privilege of conducting charitable gaming in the Commonwealth of Kentucky, there is hereby levied upon the use, sale, rental, lease, or distribution by sale or by gift of charitable gaming supplies and equipment a fee of ten percent (10%) of the value of all supplies and equipment used, sold, rented, leased, or otherwise distributed by a licensed distributor to any licensed charitable organization in the Commonwealth of Kentucky.

(a) Every distributor of charitable gaming supplies and equipment shall pay and report the fee levied pursuant to this subsection on or before the twentieth day of the calendar month next succeeding the month in which possession of the charitable gaming supplies and equipment is transferred from the distributor to the licensed charitable organization, in accordance with administrative regulations promulgated by the department.

(b) The department may require a bond from distributors in accordance with the administrative regulations promulgated by the department.

(4) If the alternative license fee schedule as provided in subsection (3) of this section is activated due to a final decision of the highest appellate court in the Commonwealth of Kentucky as provided in subsection (3) of this section, the distributor's license fee as provided in KRS 238.530(1) shall become inapplicable.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 374, sec. 16, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 232, sec. 14, effective April 1, 1998. -- Amended 1996 Ky. Acts ch. 331, sec. 13, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 15, effective March 16, 1994.

2000-2002 Budget Reference. See State/Executive Branch Budget, 2000 Ky. Acts ch. 549, pt. V, item 2(5), at 3456; and State/Executive Branch Budget Memorandum, 2000 Ky. Acts ch. 525, at 1972 and 2674 (Final Budget Memorandum, at 91 and 836).

238.995 Penalties.

- (1) Any person who willfully conducts without the required license any activity which under this chapter requires a license shall be guilty of a Class A misdemeanor.
- (2) Any person who makes any materially false or misleading statement in making application for licensure or in submitting reports required under this chapter, or any person who willfully fails to maintain records or make entries required under this chapter, or any person who willfully refuses to produce for inspection any books, documents, or records required under this chapter shall be guilty of a Class A misdemeanor.
- (3) Any person who engages in conduct designed to corrupt the outcome of any charitable gaming activity with purpose to defraud or knowing that he is facilitating a fraud shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars (\$300) and a Class D felony if the amount involved is three hundred dollars (\$300) or more.
- (4) Any person who knowingly diverts charitable gaming funds from legitimate charitable purpose or lawful expenses allowed under this chapter to his financial benefit or the financial benefit of another person shall be guilty of a Class A misdemeanor if the amount involved is less than three hundred dollars (\$300) and a Class D felony if the amount involved is three hundred dollars (\$300) or more.
- (5) Any person who commits a second or subsequent offense within a five (5) year period under subsection (1) or (2) of this section shall be guilty of a Class D felony.
- (6) Nothing contained in this chapter shall prohibit prosecution of a violation under KRS Chapter 528 by the Attorney General, county attorneys, or Commonwealth's attorneys.
- (7) No person shall make or cause a false entry to be made in the business records of a charitable organization; alter, erase, obliterate, delete, remove, or destroy a true entry in the business

records of a charitable organization; omit to make a true entry in the business records of a charitable organization in violation of a duty to do so that he knows to be imposed upon him by law or by the nature of his position; or prevent the making of a true entry or cause the omission thereof in the business records of a charitable organization.

(8) Violation of subsection (7) of this section or falsifying business records of a charitable organization is a Class A misdemeanor.

Effective: April 10, 1996

History: Amended 1996 Ky. Acts ch. 331, sec. 14, effective April 10, 1996. -- Created 1994 Ky. Acts ch. 66, sec. 16, effective March 16, 1994.